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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,741	08/05/2003	Sajeev Madhavan	200209682-1	9672

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

DAILEY, THOMAS J

ART UNIT	PAPER NUMBER
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2152

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/635,741

Applicant(s)

MADHAVAN, SAJEEV

Examiner

Thomas J. Dailey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>15 March 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-30 are pending in this application.

Claim Objections

2. Claim 21 is objected to because of the following informalities: on line 1 it recites, "claim15," it should recite, "claim 15." Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first and second paragraphs of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3, 17, and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
5. Claim 3 recites, "said selected free computing resource is not configured to operate in accordance with a configuration of said operating resource being

replaced." See the below 112 2nd paragraph rejection of this claim for its interpretation (It will be interpreted as claims 17 and 26 are written). Nowhere, in the figures and the specification, could the examiner find support for the claim. Rather, the closest support for this claim came in the specification on page 6, lines 10-14, where it recites, "In accordance with embodiments of the invention 100, 200, 300 the free computing resources 304 are *not configured for operation until after* it has been determined that there is a need for a replacement computing resource in the operating computing resource pool 301." In this case the resource is still configured, but this occurs only after a need has been determined. Therefore, this claim seems to directly contradict the substance of the other claims and the specification, as configuration of the resource always occurs.

6. As to claims 17 and 26, they are rejected by the same rationale set forth in claim 3's rejection.

7. Claims 2-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 2 recites, "said selected free computing resource *is configured to operate* in accordance with a configuration of said operating computing resource being replaced."

It is unclear what "is configured to operate" is referencing. It could be referencing the resource, i.e. the resource is presently configured to operate and hence needs no configuration. Likewise, it could be referencing the act of configuring, i.e. the resource will be configured to operate. Read in view of claims 16 and 25, in will be interpreted as the latter, i.e., "[The method] is operable to configure said selected free computing resource to operate in accordance with a configuration of said first operating resource being replaced."

9. Claim 3 recites, "said selected free computing resource *is not configured to operate* in accordance with a configuration of said operating resource being replaced."

It is unclear what "is not configured to operate" is referencing. It could be referencing the resource, i.e. the resource is presently not configured to operate. Likewise, it could be referencing the act of not configuring, i.e. the resource will not be configured to operate. Read in view of claims 17 and 26, in will be interpreted as the latter, i.e., "[The method] is operable to configure said selected free computing resource not to operate in accordance with a configuration of said first operating resource being replaced."

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-30 rejected under 35 U.S.C. 102(e) as being anticipated by Kaminsky et al (US Pub. No. 2004/0078622 A1), hereafter "Kaminsky."

12. As to claim 1, Kaminsky discloses a computing resource management method (Abstract) comprising:

establishing a pool of free computing resources in a computing system ([0026], lines 1-6, the server farm reads on "a pool of free computing resources"); selecting a free computing resource from said pool of free computing resources to replace an operating computing resource in said computing system ([0033] a new server (free computing resource) is selected from the server farm (pool of resources) to respond to request that was directed to the initially assigned server (operating computing resource)); and configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources not preconfigured for use in said computing system ([0033], lines 1-5, when the new server is assigned it will inherently be configured as further evidenced by [0007], lines 5-7, and [0009]).

13. As to claims 15 and 22, they are rejected by the same rationale set forth in claim 1's rejection.

14. As to claim 2, Kaminsky discloses said selected free computing resource is configured to operate in accordance with a configuration of said operating computing resource being replaced ([0033], when the new server (free computing resource) is assigned it will inherently be configured to operate the same the initially assigned server (operating computing resource) it is replacing was, otherwise it would not be able to respond to the incoming requests and thereby would not be replacing initially assigned server).

15. As to claim 3, Kaminsky discloses said selected free computing resource is not configured to operate in accordance with a configuration of said operating resource being replaced ([0033], any of the servers in the server farm (free computing resources) that are not assigned to respond to the retry reply will not be configured).

16. As to claim 4, Kaminsky discloses said selecting and configuring said free computing resource is initiated automatically upon a failure of said operating computing resource in said computing system ([0018], lines 5-9 and [0029], lines 1-3, the retry request reads on "a failure").

17. As to claim 5, Kaminsky discloses said selecting and configuring said free computing resource is initiated in response to an end-user request for a changed operating computing resource in said computing system ([0018] and Fig. 2, lines 5-9, the client (an end-user) issues a retry request (request for a changed operating resource) to the sprayer which then selects and configures a new server (free computing resource)).
18. As to claim 6, Kaminsky discloses said selecting and configuring of said free computing resource is based on a usage plan for using said free resources in said free pool of computing resources ([0033], lines 5-8).
19. As to claim 7, Kaminsky discloses said usage plan for using said free resources is implementable automatically in response to a failure of an operating computing resources in said computing system ([0029], lines 1-3 and [0033], lines 5-8).
20. As to claim 8, Kaminsky discloses said selecting and configuring said free computing resource to replace said operating computing resource occurs transparently to end-users in said computing system (Fig. 2, the client (end-user) is not directly aware due to the fact it has no way of seeing the internal communication of the server farm).

21. As to claim 9, Kaminsky discloses said computing system comprises a Utility Data Center (Fig. 1, label 160, administration node is functionally equivalent to the claimed Utility Data Center).

22. As to claim 10, Kaminsky discloses said computing system comprises a computer network (Fig. 1, label 130).

23. As to claim 11, Kaminsky discloses monitoring said computing system to detect failed operating computing resources ([0018], lines 5-9 and [0029], lines 1-3).

24. As to claim 12, Kaminsky discloses relegating said failed operating computing resources to a pool of quarantined computing resources ([0035], lines 1-5, by taking remedial measures and treating the failed servers differently this is in effect a quarantine).

25. As to claim 13, Kaminsky discloses rehabilitating said failed operating computing resources for reprovisioning into said computing system ([0035], lines 1-5).

26. As to claim 14, Kaminsky discloses said computing resources comprise routers, servers, data storage systems and CPU's (Fig. 1, labels 130 and 150).

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27. As to claims 16 and 25, they are rejected by the same rationale set forth in claim 2's rejection.

28. As to claims 17 and 26, they are rejected by the same rationale set forth in claim 3's rejection.

29. As to claims 18, 24, and 27, they are rejected by the same rationale set forth in claim 4's rejection.

30. As to claims 19 and 28, they are rejected by the same rationale set forth in claim 5's rejection.

31. As to claims 20 and 29, they are rejected by the same rationale set forth in claim 8's rejection.

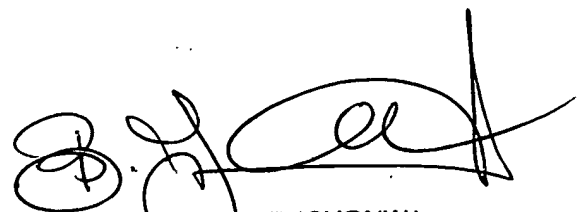
32. As to claims 21 and 30, they are rejected by the same rationale set forth in claim 6's rejection.

33. As to claim 23, it is rejected by the same rationale set forth in claim 11's rejection.

Conclusion

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.
35. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


TJD
2/15/2007


BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER